

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGUR BENCH, NAGPUR.
Criminal Writ Petition No.672/2005.

Shri N.S. Badar, Advocate for the petitioner,
Shri T.R. Kankale, APP for the respondents.

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CORAM : S.A. BOBDE & A.P.LAVANDE, JJ.
DATED : FEBRUARY 17, 2006

P.C.

1 Rule returnable forthwith. Heard by consent of the parties.

2 The petitioner challenges the order dated 10th November 2004 passed by the Divisional Commissioner, Amravati, rejecting the petitioner's application for parole.

3 Learned counsel for the petitioner submits that his application for parole has been disposed of as though it is application for furlough. It is apparent from the order that the reason for rejecting the petitioner's application is that the petitioner has reported late to the Jail Authority by a period of 10 months.

4 Having heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents, we

are of the view that the impugned order suffers from error of law apparent on the face of record in view of non-consideration of the main reason for which the petitioner sought parole namely the serious illness of his mother. The Divisional Commissioner, Amravati, has apparently taken into account only the fact that the petitioner was absent for a period of 10 months from the prison after furlough was granted to him on the last occasion. Though the absence due to overstay on an earlier occasion may not be completely irrelevant, in view of Rule 28 of the Prisons (Bombay Furlough and Parole) Rule 1959, the order must nonetheless reflect the consideration of the main reason put-forth by a prisoner.

5 In the circumstances, we are of the view that it would be in the interest of justice to set aside the impugned order which is hereby set aside. The matter is remanded back to the Divisional Commissioner, Amravati, for fresh decision in accordance with law. The Divisional Commissioner, Amravati, is directed to decide the petitioner's application within 15 days from the receipt of communication of the order of this Court. The learned Additional Public Prosecutor is directed to communicate this order to the Divisional Commissioner, Amravati, forthwith.

Rule is disposed of accordingly.

JUDGE

JUDGE

A.